sence of evidence to the contrary, is sufficient evidence of the fact that the payment was made by or for some one entitled to redeem the land.

6. EJECTMENT—*Lands excepted from grant—Burden of proof—Case at bar.* The burden of proof is on the plaintiff in ejectment to show that the land claimed by him is not within the reservation of the grant from the Commonwealth under and through which he traces his title. He must recover upon the strength of his own title. In the case at bar one of the deeds under which the plaintiff claimed excepted all lands which had theretofore been aliened by him and which were not then in his possession. Hence it was necessary for the plaintiff to show that the land sued for had not already been aliened by such grantor at the time of his conveyance. The evidence of a witness that he was acquainted with the tract and that he knows that large parts of it had been in the actual possession of said grantor and those claiming under him since the year 1856, and were still in his possession, was not of itself sufficient to justify a finding for the plaintiff.

BOYD AND OTHERS v. CLEGHORN AND OTHERS.—Decided at Wytheville, July 8, 1897.—*Harrison*, J.—*Cardwell*, J., dissenting:

1. APPEALS—*Correct decree—Wrong reasons assigned.* If the decree of the trial court is right, this court will affirm it, though it does not approve the reasons assigned by the trial court.

2. SPECIFIC PERFORMANCE—*Parol contract for sale of land—Statute of frauds—Evidence.* Notwithstanding the statute of frauds courts of equity, in order to defeat a fraud, will compel the specific execution of a parol contract for the sale of lands if the contract is established by clear and convincing proof. In the case at bar the evidence is not of that clear and convincing character necessary to entitle appellants to the relief sought.

GARY v. ABINGDON PUBLISHING COMPANY.—Decided at Wytheville, July 8, 1897.—*Keith*, P:

1. PLEADING—*Declaration—Contract and tort—Misjoinder.* A declaration which contains one count to recover damages for breach of a contract, and another to recover damages for a tort—trover and conversion—is bad on general demurrer. There is a misjoinder of causes of action, and it is immaterial that the separate counts may be respectively perfect in themselves.

PENN AND OTHERS v. HEARON.—Decided at Wytheville, July 8, 1897.—*Cardwell*, J:

1. CHANCERY PLEADING—*Suit by assignor for benefit of assignee.* The assignor of a chose in action, secured by a vendor's lien reserved on real estate, cannot sue in equity for the benefit of his assignee to enforce the lien. The assignment carries no interest in the land. The complainant in equity must be the party owning the beneficial interest.

RADER AND OTHERS v. BRISTOL LAND CO. AND OTHERS; BISHOP AND OTHERS v. SAME.—Decided at Wytheville, July 8, 1897.—*Riely*, J:

1. CHANCERY JURISDICTION — *Multifariousness — Fraudulent representations — Parties.* A number of persons who have been fraudulently induced to enter into

contracts with a company by means of the same false representations, and who have sustained the same injury, except in amount, and seek precisely the same character of relief, may unite in one bill praying for the cancellation of their contracts, and make the offending company, and its officers and agents through whom the fraudulent representations were made, parties defendants.

THOMAS v. JONES.—Decided at Wytheville, July 8, 1897.—*Harrison*, J.

1. TAX TITLES—*Purchasers from auditor—Notice under Acts 1895–6, page 219.* The title acquired, in the manner required by law, by a purchaser of real estate which has been previously purchased in the name of the auditor for delinquent taxes can be defeated only by proof that the taxes or levies for which said real estate was sold were not properly chargeable thereon, or that such taxes and levies have been paid. Whether the notice required by Acts 1895–6, ch. 179, p. 219, to be served on the former owner or his personal representative, has been properly served or not is immaterial.

2. TAXES—*Lien superior to vendor's lien—Sec. 661 of Code.* Taxes on real estate, though assessed against a vendee subsequent to his purchase, have priority over the vendor's lien for purchase money. The provision of sec. 661 of the Code that "the right or title to such estate shall stand vested in the grantee in such deed as it was vested in the party assessed with the taxes or levies on account whereof the sale was made," refers to the character of the title which shall be vested in the grantee, whether it be a fee simple, or otherwise. The purchaser does not take it subject to the liens resting thereon at the time the taxes were assessed.

OSBORNE v. PULASKI LIGHT & WATER CO.—Decided at Wytheville, July 15, 1897.—*Harrison*, J:

1. STREETS—*Obvious obstructions—Duty of traveler.* Travelers along a public street have a right to assume that the street is in a reasonably safe condition, and are not required to keep their eyes on the pavement at every moment. But they are bound to use ordinary and reasonable care to avoid danger, and cannot recover for injuries inflicted by coming in contact with obstructions which are obvious to the most casual observer.

TARTER v. WILSON, ADMR. CATHERINE TARTER, AND OTHERS.—Decided at Wytheville, July 15, 1897.—*Buchanan*, J. Absent, *Riely*, J:

1. RES JUDICATA—*Second suit between the same parties—What not concluded.* In a second suit between the same parties or their privies a complainant, who was a defendant to the first suit, will not be estopped from asserting a claim which, though mentioned in a general way in his answer in the first suit, was not put in issue by the pleading in the first suit and which was not passed upon in the first suit and could not have been properly passed upon therein. Proving a case not made by the pleadings does not authorize the court to pass upon such extraneous matter, except by consent. In the case at bar the subject matter of the suit is not concluded by the proceedings in the first suit.